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THE DEPUTY SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

rec'd 30 Aug 77
Active Registry
17-1925/2
Defense

AUG 26 1977

Admiral Stansfield Turner
Director of Central Intelligence
Washington, D.C. 20505

Dear Stan,

In the light of the Department of Justice opinion of July 15, 1977, expressing the view there is no statutory bar to including counterintelligence resources within the National Foreign Intelligence Program, provided the President authorizes it and adequate separation of counterintelligence resources from law enforcement and internal security functions can be effected, we are amenable to submitting Defense counterintelligence resource figures for inclusion in the November NFIB.

We believe there is an unavoidable grey area between counterintelligence functions which are plainly law enforcement and those which have intelligence-gathering as their primary goal; consequently, separation of these latter resources will not be distinct and will remain in nature of a "guess-timate." Nevertheless, we are satisfied that we can arrive at estimates based upon man-years of effort, rather than manpower spaces, which you indicated are acceptable for NFIP purposes.

As you probably know, the resources within Defense devoted to those counterintelligence functions which are not oriented toward internal security or law enforcement are extremely limited. The more rigorous our efforts to achieve "separation," the smaller and less meaningful the figures become. Also, our counterintelligence objectives are necessarily somewhat different from those of the CIA or the FBI.

The Executive Order that implements PD/NSC 17 will authorize inclusion of Defense, FBI and other agency counterintelligence resources in the National Foreign Intelligence Program. Hopefully, this can be accomplished prior to the November

NFI Budget submissions. Also, it will be understood that any figures Defense then submits for counterintelligence will be over and above current program guidance.

Sincerely,

Charles

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1 August 1977

The Honorable Charles W. Duncan, Jr.
Deputy Secretary of Defense
Washington, D.C. 20301

Dear Charles,

The question of including the Department of Defense's foreign counterintelligence resources in the NFIP was to have been an issue at the 19 July 1977 PRC(I) meeting. In the press of business at that meeting, there was not sufficient time to address the foreign counterintelligence issue.

Our intent had been to consider the Department of Justice's 15 July 1977 opinion "on the legality of the designation by the National Security Council Policy Review Committee (PRC) of certain Department of Defense (DOD) counterintelligence resources as part of the National Foreign Intelligence Program (NFIP)." This opinion states that there is neither a statutory prohibition on the DCI being given additional responsibilities by the President, nor on including counterintelligence in the NFIP. The opinion further explains that these additional responsibilities must be set forth explicitly, and that any activities added must be adequately separable from others which are not specifically described.

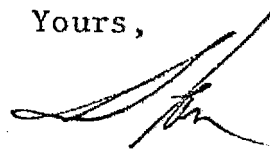
Because compliance with the opinion depends on DOD's ability to separately identify foreign counterintelligence resources from resources of other activities with which they are intermingled, it appears appropriate for you to determine if adequate separation has been effected. We feel that your estimates, based on man-years of effort, are adequate and also preclude potential loss of day-to-day management flexibility, which is inherent in complete physical separation of these activities.

(EXECUTIVE REGISTRY FILE

Defense

Upon receipt of your concurrence that the DOD estimates provide adequate separation and no other barriers exist to including these resources in the NFIP, I will follow through with the other PRC(I) principals to resolve the issue.

Yours,



STANSFIELD TURNER

Enclosure:

DOJ ltr to General Counsel,
CIA, dated 15 July 1977

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DCI/IC 77-4399

26 JUL 1977

MEMORANDUM FOR: Director of Central Intelligence

FROM: John N. McMahon
Acting Deputy to the DCI for the
Intelligence Community

SUBJECT: Inclusion of DoD Foreign Counterintelligence
in the NFIP

1. Action Requested: Your signature on the attached proposed letter to Deputy Secretary Duncan.

2. Background:

a. This issue was opened by the Committee on Foreign Intelligence in November 1976, and was strongly opposed by DoD.

b. Action was deferred pending a DoD study.

c. The DoD study, dated 19 January 1977, concluded:

(1) FCI cannot be separated from investigative activities except as an estimate based on man-year activity.

(2) There is a statutory prohibition on a body, chaired by the DCI, dealing with counterintelligence.

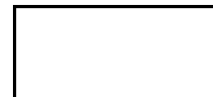
d. IC Staff review deemed DoD estimates of FCI resources adequate for NFIP purposes.

e. An opinion was obtained from Department of Justice (DOJ) that concluded:

(1) No statutory prohibition on PRC(I) including counterintelligence in the NFIP.

(2) Because it is a Presidential tasking rather than a statutory role, only those activities explicitly set forth can be included, and they must be adequately separable from others which are not specifically described.

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WHEN SEPARATED FROM ATTACHMENT



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SUBJECT: Inclusion of DoD Foreign Counterintelligence in the NFIP

(3) Discussion with DOJ staff indicates that "separation" is an administrative function rather than legal, and can range from dedicated resources with separate management to adequate estimates.

f. Because these are DoD resources, and compliance with the DOJ opinion will probably require unanimous agreement between participants because the decision involves estimates, we feel it is appropriate for Deputy Secretary Duncan to make the determination of adequacy.

g. If he does not deem the DoD estimates as adequate separation, in view of the DOJ opinion, there is little need to pursue the inclusion of these resources.

h. If he does deem it adequate, as I have been led to believe he will, we will be able to include the DoD FCI resources and close the issue by memoranda and phone actions.

(1) NSC Staff is on record supporting the inclusion.

(2) State Staff has informally noted that it is only logical to include them.

3. Recommendation: That you sign the attached letter to Deputy Secretary Duncan.

[Redacted Signature Box]

John N. McMahon

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Attachments:

1. Intel-Related Activities FCI
2. Proposed ltr to DepSec Duncan

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Document No. DCI/IC 77-4399

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INTELLIGENCE-RELATED ACTIVITIES
FOREIGN COUNTERINTELLIGENCE

ISSUE STATEMENT: Should DOD foreign counterintelligence (FCI)* resources be included in the NFIP? Review of this issue is predicated on a 5 November 1976 CFI decision to defer action to include such resources pending a DOD study of (1) methods to separately identify FCI resources from those for investigative activities and (2) legal implications of including the DOD FCI in the NFIP.

DISCUSSION:

DOD FCI is presently considered by the DCI as a subject to be reviewed in the manner of an intelligence-related activity, even though it is not within the DOD definition or management schema for Intelligence-Related.

Factors which were addressed in the presentation to the CFI on 5 November 1976 (Attachment 1) were:

- FCI is a HUMINT activity, differing only from others in that foreign intelligence services are its targets.
- High interest in FCI has been expressed by the Senate Select Committee, the Rockefeller Commission, and the PFIAB.
- FBI and CIA FCI activities are included in the NFIP which leaves the military Services, with approximately 20% of the total resources, as the only US FCI activities not included in the NFIP.
- Although it is not specifically required that all FCI be included in the NFIP, E.O. 11905 does define FCI as part of "intelligence" and provides for discretionary inclusion. Not including the DOD sector leaves the PRC(I) with an incomplete overview of and accountability for FCI programs.
- Similarity of targeting between agencies infers that there are advantages to be derived from a comprehensive programmatic approach.
- Because the personnel used in DOD's counterintelligence and other investigative activities are not dedicated to either role from job-to-job, DOD lumps these activities into a single program element. Therefore, DOD can only estimate--albeit adequately for PRC(I) purposes--the resources devoted to FCI.

* CI in this context does not include protective security functions such as personnel background investigations, complaint investigations and protective security surveys and services; nor does it include criminal investigations. It does include foreign CI collection, foreign CI investigations for operational leads, foreign CI operations and foreign CI production.

Corrected
7/6/77

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-- Expressed concerns of the Principal Deputy, Director of Defense Intelligence as to the propriety of including DOD FCI in the NFIP were:

- activities are defensive and internal security oriented, largely of a law enforcement nature.
- efficiencies and effectiveness of common programming and budgeting of DOD Counterintelligence and Investigative Activities (CI&IA) preclude anything more than an estimate for separate expression of resources devoted to FCI.
- there is no clear mandate for inclusion in the NFIP.

As a result of that presentation, the CFI agreed that the decision to include this program in FY 79 should be deferred pending completion of a DOD study. It requested that Defense study methods of identifying counterintelligence resources separate from those of investigative activities and the legal implications of including the DOD FCI in the NFIP. It was suggested that this study be done in consultation with the FBI, where a similar problem to separately sort FCI resources from commonly used resources had been solved. (Attachment 2)

On 19 January 1977, Deputy Secretary of Defense Ellsworth forwarded the DOD study to the CFI. (Attachment 3)

The study concluded that:

1. Defense CI efforts can be separated as rough man-year approximations, though not suitable for budgetary purposes.
2. Counterintelligence efforts within Defense are largely of an internal security and law enforcement nature, and hence inappropriate for inclusion in the NFIP. This assertion is based on a construed legal opinion, purporting to show statutory constraints against a role for the DCI, or any body which he chairs, in these areas.

Review of this study by IC Staff shows that, while not technically suitable for budgetary purposes, the FCI resource approximations are sufficient, and also necessary, for the PRC(I) to fulfill its role of accountability for all Government resources devoted to foreign intelligence and counterintelligence. Congressional emphasis has been reaffirmed during the FY 78 budget hearings, with their expressed expectations that the total of US intelligence resources be presented. During these hearings, counterintelligence was specifically addressed. Except for Defense FCI, the resources associated with FCI by all other elements engaged in these activities, namely, FBI and CIA, were adequately accounted for in the NFIP. The House Appropriations Committee, for example, highlighted the "inconsistency" of including the FBI and CIA counterintelligence activities in the NFIP while excluding military counterintelligence activities.

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Further, a review of assertions in the study, regarding legal constraints on the DCI in these areas, was prepared by legal counsel responsible for Community matters (Attachment 4). Contrary to DOD's assertion, counsel found no obstacle presented by statute to preclude the DCI's performance of duties in addition to those of direction of the CIA; and thus the President can, and did in Executive Order 11905, assign other duties. Such assignment is consistent with the separate and larger capacity for the DCI anticipated and authorized by the National Security Act of 1947. Supporting this view, the DOD study, on page 8 (III B. paragraph 2), concluded that the propriety of including DOD FCI activities in the NFIP is not so much a legal issue as a policy question.

During the period since the November 1976 CFI meeting, PRC(I) movement has continued toward action on strengthening FCI policy and guidance at the national level. The direction is tending toward establishment of an NSC-level committee to provide focus on total US FCI activities. Presently, PRM-11 recommends such a committee, but does not include resources' considerations among its responsibilities. These considerations are effectively left to the PRC(I).

While there are no compelling reasons against including Defense FCI in the NFIP, there are advantages for inclusion. Among these are:

- Resource accountability is an essential ingredient to any comprehensive overview process and complementary to other actions toward a national-level body of responsibility for all US FCI policy and guidance.
- Though primary utility and management of the Services' FCI is at the departmental level, use and value at the national level is comparable. The Services' CI agencies are working against the same general targets as the other US Government FCI activities--the CIA and FBI, and their efforts are inter-related.
- It provides a basic step toward meeting the repeatedly expressed concerns of the Congress.
- It is consistent with Executive Branch and Congressional actions to define the structure of the community and responsibilities within it.
- While providing a capacity to meet these objectives, inclusion in the NFIP does not impinge on internal DOD determinations for organizational or management structure. Also, it does not restrict resource flexibility with respect to using assets between counter-intelligence and investigative activities, depending on work load requirements. This is consistent with FBI and CIA practice.

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7/6/77

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The PRC(I) has three alternatives on this issue:

- a. Include the DOD FCI resources in the NFIP.
- b. Do not include these resources in the NFIP, but maintain overview of the activities in the same way as is done with DOD Intelligence-Related Activities.
- c. Accept the DOD contention that these activities are principally of an investigative and law enforcement nature and are, therefore, not appropriate for addressal by the PRC(I).

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